

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

BRYAN J. SHOEMATE,)
)
)
Movant,)
)
)
v.) Case No. 05-0265-CV-W-HFS
) Crim. No. 03-00332-01-CR-W-HFS
UNITED STATES OF AMERICA,)
)
)
Respondent.)

MEMORANDUM AND ORDER

Movant seeks relief from a long drug sentence of 262 months based on his career offender status. He has, however, in his plea agreement, waived appeal and collateral attack as to his sentence. He also, at sentencing on March 30, 2004, withdrew a motion to withdraw his plea. See Sentencing Transcript pages 2- 3 and 10 - 12. There is no reasonable alternative to the sentence, which was correctly calculated, unless movant seeks to start from the beginning of his prosecution, as he has specifically declined to do.

Movant complains of many things, including the failure to file and prosecute a motion to suppress.¹ Some of the inconsistencies in contentions may be due to consulting with an aggressive "jailhouse lawyer". Assuming the sympathy of the court could be aroused, movant could seek relief under the Booker decision of the Supreme Court, decided last year. Booker does not, however, allow reopening of closed cases to revise sentences.

¹This argument cannot be advanced, absent a plea withdrawal. It appears to be unsound, moreover, based on written admission consistent with the Government's proof. Magistrate Judge Larsen was correct in opining informally that movant's counsel had no duty to pursue a contention that was so unlikely to be successful. Hearing of March 23, 2004.

The motion for relief under 28 U.S.C. §2255 is therefore DENIED.

/s/ Howard F. Sachs
HOWARD F. SACHS
UNITED STATES DISTRICT JUDGE

July 11, 2006

Kansas City, Missouri